

ADVOCACY BRIEF ON BILL FOR AMENDMENT AND CONSOLIDATION OF LAWS RELATED TO THE MEDIA COUNCIL, 2024

Introduction

The Bill for the Amendment and Consolidation of Laws Related to the Media Council, 2024, has been formulated with the objective of amending and unifying existing laws to establish and regulate the Media Council as an autonomous regulatory body with the aim to promote self-regulation, maintain professional and ethical standards in journalism, and foster the development and protection of clean, independent, and accountable journalism. This Bill, accompanied by a report from the Legislative Management Committee of the National Assembly, was presented to the National Assembly on April 18, 2024.

Primarily, the Bill provides for the formation of an autonomous Media Council, includes provisions on the code of conduct, self-regulation, self-assessment, representation of the press, and arrangements for compensation. Additionally, it encompasses online journalism. However, the Bill contains certain theoretical and practical issues.

Notable Provisions in the Bill:

1. Transformation of the Press Council into the Media Council

The Media Council Bill aims to transform the existing Press Council into a Media Council. Once enacted, this Bill will repeal the Press Council Act, 2048 (Section 37). The concept of the Media Council was initially proposed in the 2069 report of the High-Level Commission for the Inclusion of Communication Media in the report submitted in 2069, by preparing the concept of the media council.

2. Objective of Protection and Promotion of Self-Regulation

The preamble of the Bill emphasizes the establishment of the Media Council as an autonomous regulatory body to foster the development and promotion of fair, independent, and accountable journalism. The Bill's focus on the protection of journalism and the promotion of self-regulation is commendable. Further, the commitment in the preamble to maintain the Media Council as an autonomous body is also a positive aspect.

3. Definition of Online Journalism

The Media Council Bill brings online media under its regulatory jurisdiction. Unlike the existing Press Council Act, which does not encompass online media, this Bill addresses the issue by defining online media. However, the definition and regulation of online media as provisioned in the Bill requires reconsideration.

4. Provisions Related to Compensation

Section 22 of the Bill provides that if a person's dignity or reputation is severely affected, or if there is harm to their property or business, they can file a complaint against the concerned media organization, mass communication medium, or journalist in the relevant District Court, along with a claim for compensation. This provision, which acknowledges defamation cases as person party/ individual party and includes arrangements for compensation, is commendable.

Key Issues and Necessary Amendments in the Bill

This government-proposed Bill contains certain theoretical and practical issues. The major problematic provisions identified in the Bill are detailed below:

1. Ensuring 'Independent' Journalism

Section 3 of the Bill states that the "Media Council shall be established as an autonomous regulatory body to promote fair, dignified, and accountable journalism." While the preamble mentions "fair, independent, and accountable journalism," the term "independent" has been replaced with "dignified" in this provision. Contrary to the recognition of 'full press freedom' ensured in the preamble in the Constitution of Nepal, the proposed Section 3 has removed the word 'independent'. Therefore, the Bill seems to shift its focus towards control rather than ensuring press freedom.

If the government seeks to ensure independent journalism, its role should focus on formulating and providing the necessary policies, regulations, laws, mechanisms, and resources and it is the media sector itself that must strive to maintain dignified journalism. The government should not impose dignity through legislation.

Suggestion:

The Council should emphasize independent journalism rather than dignified journalism. In this regard, the word "dignified" in section 3 should be replaced with "independent" to uphold the principle of press freedom.

2. Independence and Autonomy of the Council

Section 3 of the Bill provides for the establishment of the Media Council as an "autonomous regulatory body." However, while it refers to the Council as "autonomous," it does not describe it as an "independent" body. Ensuring the independence and autonomy of the Media Council through the very legislation that establishes it is of utmost importance.

Section 6(8) of the Bill states that 'the Director General of the Department of Information and Broadcasting will serve as the Secretary of the Council'. The independence of any institution significantly depends on its level of administrative and financial autonomy. Generally, secretaries hold key administrative and financial authority within an institution and Assigning this role to the Director General of the Department of Information and Broadcasting could undermine the administrative and financial independence of the Media Council. International practices show that media councils typically have minimal government involvement and manage their administrative and financial affairs through officials appointed by the council itself. Such arrangements help media councils function independently and autonomously.

Further, the proposed Bill does not define the roles, duties, or powers of the Council's Secretary.

Suggestion:

- The Council should be designated as an "independent and autonomous body" in the Bill.
- The Council should have the authority to appoint its Secretary independently.
- The administrative and financial autonomy of the Council must be ensured.

3. Formation of the Council

1. Independence of the Recommendation Committee: Section 6(2) of the Bill proposes a three-member recommendation committee comprising the Secretary of the Ministry as the Coordinator, a Joint Secretary as a Member, and an expert appointed by the Government of Nepal as another Member. Since two out of three members are government officials from the Ministry, and experts are to be appointed by the government, the members would not be independent from the government and the council itself is unlikely to remain independent of the government. Furthermore, as the "Chairperson of the Council is to be appointed by the Government of Nepal," the scope of the recommendation committee's jurisdiction is severely limited.

2. Structure of the Council: Section 6(1)(a) of the Bill specifies that the Council will consist of a "Chairperson appointed by the Government of Nepal" and the "senior-most gazetted first-class officer designated by the Ministry" as a senior member [Section 6(1)]. While the Media Council is envisioned as an independent and autonomous body to promote independent journalism, the inclusion of a government official designated by the Ministry as a member of the Council undermines the Council's independence and autonomy.

Suggestions:

- To ensure the independence and autonomy of the Council, provisions should be made to minimize government interference.
- The recommendation committee's structure should be revised to include representatives from diverse stakeholders.
- Provisions related to the Council's formation, the recommendation committee, delegation of authority, and budgetary arrangements should be amended.

4. Neglect of the Concept of Federalism

Section 3(2) of the Bill states that the Council's office shall be located in the Kathmandu Valley. However, the draft lacks provisions regarding the structure of the Council at the provincial level or mechanisms to include provinces within the scope of this legislation. This oversight could lead to situations where each province might establish its own provincial media council in the future.

Further, the Bill does not clarify whether communication media content can be regulated at the provincial and local levels. Schedule 6 of the Constitution ensures provinces the right to operate radio, FM, and television, while Schedule 8 provides local levels with the authority to operate FM stations. Along with the operation of communication media comes the issue of regulation. Therefore, the Bill should explicitly address the regulation of content at the provincial and local levels.

Section 6(1)(d) specifies that the Media Council will include "at least seven members, with one individual from each province, including a minimum of three women." However, the process of provincial participation, the roles of provincial representatives, and how provinces will feel a sense of ownership in the Media Council have not been adequately addressed.

Suggestions:

- The Bill should align with the spirit of federalism by incorporating provisions that ensure representation, participation, and ownership from the federal structure.
- The Bill should explicitly clarify provisions regarding the regulation of communication content at the provincial and local levels.

5. Executive Dominance due to Delegated Power

The Bill appears to grant extensive delegated authority to the executive branch. Substantive matters, which should be outlined in the Act itself, are left to the mandate of the Ministry, using provisions such as "as prescribed." Delegating such issues, which should be addressed by the legislature, to the executive not only curtails legislative authority but also allows the supposedly autonomous Council to operate under rules determined by the Ministry.

Suggestions:

The practice of prescribing substantive issues, which need to be resolved by the parliament, to the executive jurisdiction with the assumption that they will be addressed as prescribed should be improved. The legislature should explicitly detail in the law the issues that require discussion and resolution.

6. Ambiguity Regarding Judicial Qualifications of the Chairperson of the Council

Section 7(c) of the Bill outlines the qualifications for the Chairperson of the Media Council, which states that the Chairperson should 'either be qualified to serve as a Supreme Court judge or hold at least a bachelor's degree from a recognized university, with a minimum of 15 years of experience and significant contributions in the field of journalism'. This provision allows for the possibility of a legal expert or a journalism expert serving as Chairperson. Given that the Council is a quasi-judicial body responsible for adjudicating cases related to journalists and journalism, it is more appropriate for the Chairperson to possess judicial qualifications.

International practices also often emphasize appointing individuals with judicial expertise to lead such quasi-judicial bodies. Therefore, it is appropriate to make it mandatory to be a legal person as a necessary qualification to be the chairperson.

Suggestions:

It should be made mandatory for the chairperson to possess judicial qualifications.

Conclusion

The Media Council Bill 2024 has proposed some positive measures to promote self-regulation and chart a path for the development and protection of fair, independent, and accountable journalism. However, it is necessary to reconsider various provisions of the bill to ensure the independence and autonomy of the council, safeguard and promote independent journalism, address and secure ownership and participation in provincial structures in line with the spirit of federalism, and encourage self-regulation.

Digital Rights Nepal

Digital Rights Nepal (DRN) is a non-profit organization established in 2020, dedicated to safeguarding digital rights and fostering a secure online environment in Nepal. With a diverse team of advocates and experts, DRN conducts research, advocates for policy reforms, and engages in capacity-building initiatives to promote online freedom of expression, privacy protection, access to information, and cybersecurity. Led by passionate changemakers in human rights and digital advocacy, DRN plays a pivotal role in shaping the digital landscape of Nepal, both locally and on the international stage. For more information on DRN activities and resources, please visit www.digitalrightsnepal.org.



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